

for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 4.31 percent, the corporate bond weighted average is 6.42 percent, and the 90 percent to 100 percent permissible range is 5.78 percent to 6.42 percent. **Notice 2009-96, I.R.B. 2009-52.**

The IRS has published a revenue ruling providing tables of covered compensation under I.R.C. § 401(l)(5)(E) and the regulations, thereunder, for the 2009 plan year. For purposes of determining covered compensation for the 2010 year the taxable wage base is \$106,800. **Rev. Rul. 2009-40, I.R.B. 2009-52.**

SOCIAL SECURITY DISABILITY BENEFITS. The taxpayer was injured at work and received disability payments under an insurance policy. The taxpayer was later awarded social security disability benefits which caused the private insurance payments to be decreased by the amount of the SS disability payments. The taxpayer argued that the SS disability payments should be excluded from income because the benefits replaced payments which would have been excludible. The court held that I.R.C. § 86 had no exception for SS disability payments which replaced private insurance payments; therefore, the SS disability payments were included in taxable income. **Seaver v. Comm'r, T.C. Memo. 2009-270.**

START-UP COSTS. The taxpayer was fully employed and decided to start an independent consulting business, using an office in the taxpayer's home. The taxpayer claimed office and other deductions associated with the activity but failed to generate any income or clients during the tax year. The taxpayer acknowledged that the effort had failed to generate any business activity. The court held that the costs were start-up costs which could not be deducted or amortized because the business never commenced. **Ding v. Comm'r, T.C. Summary Op. 2009-186.**

TIP WAGES. The IRS extended two more years the rules for a pilot tip reporting procedure under the Tip Rate Determination/Education Program. The Attributed Tip Income Program or ATIP, is available for certain employers in the food and beverage industry and reduces many of the existing reporting requirements. Unlike other procedures under the

Tip Rate Determination/Education Program, ATIP does not require an employer to enter into an individual agreement with the IRS. Participation in ATIP is entirely voluntary for both employers and employees. An employer may participate in ATIP if, in the year prior to enrollment, at least 20 percent of the employer's gross receipts from food and beverage sales are charge receipts showing charged tips and at least 75 percent of the employer's tip-earning employees agree to participate. To enroll, an eligible employer checks the designated box on its Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips. For employers participating in ATIP, the IRS will not initiate employer-only I.R.C. § 3121(q) examinations and tip income reporting requirements will be reduced. Participating employees will not need to keep a daily tip log and the IRS will not initiate an employee tip examination during ATIP participation. **Rev. Proc. 2009-53, I.R.B. 2009-49, extending Rev. Proc. 2006-30, 2006-2 C.B. 110.**

NEGLIGENCE

DAMAGES. The plaintiff owned a 34 acre ranch which was once used as a residence but was being rented to unrelated parties at the time of damages incurred from a brush fire negligently started by the defendant. The loss of trees and other plants caused the property to suffer extensive erosion damage over the next year, rendering the property almost valueless. The plaintiff testified that the plaintiff intended to move back to the ranch at the time of the fire and use the ranch for raising livestock. The jury awarded damages for the cost of repairing the land damage, rebuilding buildings, replacing trees, loss of rental income and \$543,000 for discomfort, annoyance, inconvenience and mental anguish. The resulting damage award exceeded the pre-fire value of the property. The court held that the award for discomfort, annoyance, inconvenience and mental anguish was improper because the plaintiff did not live on the property at the time of the fire. The court upheld the replacement cost damages and the double award for the loss of the trees because the fire constituted a trespass. **Kelly v. CB & I Constructors, Inc., 2009 Cal. App. LEXIS 1865 (Calif. Ct. App. 2009).**

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